



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

MISCELLANEOUS FIRST APPEAL NO.8145 OF 2025 (CPC)

BETWEEN:

BHARATH CREDIT CO-OPERATIVE SOCIETY LIMITED,
HAVING ITS OFFICE AT
NO.148/18, 8TH MAIN ROAD,
NEAR PANCHMUKHI GANESHA TEMPLE,
MAHALAKSHMI LAYOUT,
BENGALURU-560 086
REPRESENTED BY ITS
SECRETARY & AUTHORISED SIGNATORY.

...APPELLANT

(BY SRI B.S. JEEVAN KUMAR, ADVOCATE)

AND:

1. MASTER DIYANSH .Y
S/O. YESHWANTH .A
AGED ABOUT 07 YEARS,
SINCE MINOR REPRESENTED BY
HIS NEXT FRIEND, PATERNAL GRAND FATHER
SRI. AMARNATH R,
S/O. LATE RANGAPPA,
AGED ABOUT 62 YEARS,
RESIDING AT NO.58, SRI NILAYAM,
2ND MAIN, NEAR VICTORY HARMONY APARTMENT,
AMAR JYOTHI LAYOUT,
BENGALURU-560 032.



2. SRI. YESHWANTH .A
S/O AMARNATH .R
AGED ABOUT 36 YEARS,

3. SMT. NEHA .D
W/O. YESHWANTH .A
AGED ABOUT 28 YEARS,

RESPONDENT NOS.2 & 3 ARE ALL
RESIDING AT NO.34, 5TH CROSS,
6TH BLOCK, RAJAJINAGAR,
BENGALURU-560 010.

4. SMT. JAYALAKSHMAMMA
W/O SUDHAKAR,
AGED ABOUT 40 YEARS,
RESIDING AT NO.45/42, 6TH CROSS,
6TH BLOCK, RAJAJINAGAR,
BANGALORE-560 010.

...RESPONDENTS

(BY SRI H.S. SANTHOSH, ADVOCATE FOR
SMT. H.S. SANGEETHA, ADVOCATE FOR R-1;
NOTICES TO R-2 TO R-4 ARE DISPENSED WITH)

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) OF CPC.,
AGAINST THE ORDER DATED 15.09.2025 PASSED ON I.A.NO.II
AND III IN O.S.NO.2826/2025 ON THE FILE OF THE XLI
ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU
(CCH-42), ALLOWING THE I.A.NO.2 FILED UNDER ORDER 39
RULE 1 AND 2 OF CPC AND REJECTING I.A.NO.3 FILED UNDER
ORDER XXXIX RULE 4 READ WITH SECTION 151 OF CPC.

THIS APPEAL COMING ON FOR ORDERS, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA



ORAL JUDGMENT

This miscellaneous first appeal is preferred by defendant No.3, calling in question the order dated 15.09.2025 passed on I.A.Nos.2/2025 and 3/2025 in O.S. No.2826/2025 on the file of the XLI Additional City Civil and Sessions Judge, Bengaluru ('Trial Court' for short), whereby the application filed by the plaintiff under Order XXXIX Rules 1 and Rule 2 CPC has been allowed, granting temporary injunction and application filed by the appellant under Order XXXIX Rule 4 seeking vacation of the said order has been rejected.

Brief facts:

2. The plaintiff, a minor represented by his parental grandfather has instituted suit O.S. No.2826/2025, seeking declaration that he is the absolute owner in possession of the suit schedule property under a registered Will dated 19.02.2010 and consequential reliefs are sought to declare that :



i. The gift deed dated 05.05.2017 executed by defendant No.1 in favour of defendant No.2 and

ii. The mortgage deed dated 06.10.2017 executed by defendant No.2 in favour of defendant No.3-appellant (Bharath Credit Co-Operative Society Limited) are null and void and not binding on the plaintiff, along with a prayer for permanent injunction restraining alienation.

3. It is the case of the plaintiff that defendant No.1 had only a limited right under the Will and therefore, could not have executed the gift deed in favour of defendant No.2, pursuant to which, the property came to be mortgaged in favour of the appellant-bank (defendant No.3).

4. On default of repayment, the appellant-defendant No.3 initiated recovery proceedings under the provisions of the Karnataka Co-operative Societies Act, 1959 ('KCS Act' for short). The Joint Registrar of Co-operative Societies passed an order directing defendant



Nos.1 and 2 to pay a sum of ₹44,17,146/- with interest. It is further stated that pursuant thereto, secured asset was brought to sale by way of auction. The plaintiff had earlier approached this Court in W.P. No.1421/2025 and obtained an interim order dated 22.01.2025, staying the auction, subject to the condition of depositing ₹15,00,000/-. The said condition was admittedly not complied with, thereby resulting in vacation of the interim protection. It is also not in dispute that defendant No.1 had been convicted under Section 139 of the Negotiable Instruments Act, 1881 and directed to pay a sum of ₹22,04,166/-. Subsequently, the property was brought on to auction on 21.03.2025. The present suit came to be filed thereafter seeking the aforesaid declaratory and injunctive reliefs. The appellant filed an application under Order XXXIX Rule 4 seeking vacation of the *ex parte* order of injunction, which came to be rejected by the Trial Court.

5. Learned counsel for the appellant contends that the impugned order passed by the Trial Court is



unsustainable both on facts and in law. It is submitted that the appellant had initiated recovery proceedings strictly in accordance with the provisions of the KCS Act, and culminating in an order passed by the Joint Register directing defendant Nos.1 and 2 to pay a sum of ₹44,17,146/- with interest. It is further contended that the plaintiff had earlier approached this Court in W.P. No.1421/2025 challenging the auction proceedings and obtained an interim order dated 22.01.2025 subject to the condition of depositing a sum of ₹15,00,000/-. The said condition having not been complied with, the interim order stood vacated. Suppressing the said material, the present suit has been filed to indirectly to secure the very relief which was denied in the writ proceedings.

6. Learned counsel would further submit that the mortgage in favour of the appellant is under a legal transaction and the recovery proceedings are statutory in nature and therefore, the Trial Court ought not to have interdicted such proceedings by way of an injunction.



7. It is also contended that the suit is barred by limitation, insofar as the challenge to the gift deed dated 05.05.2017 is concerned, and that the suit is not maintainable in view of the statutory bar under the KCS Act. It is contended that the Trial Court has misdirected itself in holding that the interest of the minor overrides all other considerations, without examining the conduct of the plaintiff, the suppression of material facts, and the conduct of defendant Nos.1 and 2, and has thus erroneously exercised its discretion in granting a temporary injunction.

8. *Per contra*, learned counsel for respondent No.1-plaintiff would contend that the plaintiff derived title to the suit schedule property under a registered Will dated 19.02.2010 and defendant No.1 had only a limited right to enjoy the property and was not competent to execute the gift deed in favour of defendant No.2. It is contended that the subsequent mortgage in favour of the appellant-bank is therefore void and not binding on the plaintiff. Learned counsel would further submit that the plaintiff being a



minor, his interests require utmost protection and any alienation or encumbrance of the property would cause irreparable injury. Insofar as the earlier writ proceedings are concerned, it is contended that non-compliance of the conditional order cannot defeat the substantive right of the minor and that the Trial Court has rightly exercised its discretion in granting an injunction to preserve the subject property pending adjudication of the suit.

9. This Court has carefully considered the rival contentions and perused the material on record. The point that arises for consideration is:

"Whether the Trial Court was justified in granting a temporary injunction in favour of the plaintiff by allowing I.A. No.2/2025 and rejecting the application-I.A.No.3/2025 filed by defendant No.3?"

10. The Trial Court recorded the following findings:

i. The plaintiff, being a minor represented by his grandfather, is entitled for protection and that any



suppression or misstatement by the next friend cannot be put against the minor so as to deny equitable relief.

ii. That the plaintiff relies upon a registered Will dated 19.02.2010 and therefore, a *prima facie* case is made out in his favour, warranting protection of the suit schedule property pending adjudication.

iii. The Trial Court further held that the proceedings initiated under the KCS Act are *inter se* between defendant Nos.1, 2 and defendant No.3 and that the same do not affect the maintainability of the present suit for declaration filed by the plaintiff.

iv. If the appellant-bank is permitted to proceed further, there is a likelihood of alienation or creation of third party rights, which may result in multiplicity of proceedings. Therefore, the balance of convenience lies in favour of the plaintiff.

v. On the aspect of irreparable injury, the Court has concluded that denial of injunction would prejudice the plaintiff, particularly considering his status as a minor.



vi. While considering I.A. filed under Order XXXIX Rule 4, the Trial Court has held that the appellant has not made out any sufficient grounds to vacate the *ex parte* order and the alleged suppression of fact is not sufficient to deny protection to the minor.

vii. Insofar as I.A.No.4/2025 filed by defendant No.3 under Order VII Rules 11 (a) and (d) CPC is concerned, seeking rejection of the plaint on the ground of non-maintainability due to statutory bar and absence of cause of action, the Trial Court has proceeded to reject the said application. Aggrieved by the rejection of I.A. No.4/2025, defendant No.3 has preferred CRP No.936/2025 before this Court, contending, *inter alia*, that the suit is collusive in nature filed by the minor plaintiff against his own parents-defendant Nos.1 and 2, and has been instituted only to defeat the award passed by the competent authority under the KCS Act in favour of the appellant-bank.



11. It is also brought to the notice of this Court that, in the said revision proceedings, this Court has granted an interim stay of all further proceedings in O.S. No.2826/2025. Despite the same, the Trial Court has proceeded to allow I.A. No.2/2025 granting temporary injunction and has rejected I.A. No.3/2025 seeking vacation of the said order.

12. The contention of the appellant is that the suit is collusive in nature, having filed by the minor against his own parents-defendant Nos.1 and 2 to defeat the award passed by the competent authority, which has not been considered at all by the Trial Court. The Trial Court has failed to appreciate that the plaintiff had earlier approached this Court in W.P. No.1421/2025 and obtained a conditional interim order, which was not complied with, leading to its vacation. The present suit is filed thereafter seeking similar relief, which *prima facie* indicates an attempt to circumvent earlier proceeding. The suppression of this material fact disentitles the plaintiff from equitable



relief. The Trial Court has proceeded primarily on the footing that the plaintiff is a minor and therefore, requires protection. While such protection is important, it cannot override the settled principle of law. The existence of a seriously disputed title, statutory recovery proceedings and the conduct of the plaintiff negate the existence of a strong *prima facie* case. The Trial Court has therefore misapplied the principles laid down for grant of temporary injunction.

13. The appellant-bank is a secured creditor acting under a statutory mandate, would suffer serious prejudice if such proceedings are restrained. The Trial Court has erroneously held that multiplicity of proceedings would arise, ignoring that the appellant is acting under the statutory recovery mechanisms.

14. In view of the above, it is evident that the Trial Court has ignored the material proceedings, including the stay order which has not been complied in W.P.



No.1421/2025, overlooked the suppression and misapplied the settled principles governing the grant of a temporary injunction. Thus, the discretion exercised by the Trial Court is not in accordance with the settled proposition of law laid down in ***Dalpat Kumar and Another Vs. Prahlad Singh and Others***¹ (*Dalpat Kumar*) and suffers from misapplication of law. Consequently, the case falls within the parameters indicated in ***Wander Ltd. and Another Vs. Antox India Pvt. Ltd.***² (*Wander Ltd.*) warranting interference by this Court and the point framed for consideration is answered and this Court pass the following:

ORDER

- i. The miscellaneous first appeal is ***allowed***.
- ii. The order dated 15.09.2025 passed on I.A.Nos.2/2025 and 3/2025 in O.S. No.2826/2025 on the file of the XLI Additional City Civil and Sessions Judge, Bengaluru is hereby ***set aside***.

¹ (1992) 1 SCC 719

² 1990 Supp (1) SCC 727



iii. I.A. No.2/2025 filed by the plaintiff under Order XXXIX Rules 1 and Rule 2 stands ***rejected*** and I.A. No.3/2025 filed by the appellant under Order XXXIX Rule 4 CPC stands ***allowed*** and accordingly, interim injunction granted stands vacated.

Sd/-

JUSTICE K.S. HEMALEKHA

MBM

List No.: 1 Sl No.: 64